

IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN  
AT JAIPUR BENCH JAIPUR.

D.B. CIVIL WRIT PETITION NO.3810/2002.

1. Assistant Director, Chandpole Zone,  
Land and Building Tax Department, Govt.  
of Rajasthan, D-149, Durga Path,  
Banipark, Jaipur.

2. State of Rajasthan through Secretary  
to the Government, Finance Department  
(Group-II), Govt. of Rajasthan,  
Secretariat, Jaipur.

3. Director, Land and Building Tax  
Department, Govt. of Rajasthan, Mini-  
Secretariat, Banipark, Jaipur.

.....Petitioners.

**Versus**

1. M/s.Bharat Petroleum Corporation  
Limited, through its Senior Divisional  
Manager, Divisional Office at Bharat  
House, 22 Godown, Jaipur.

2. The Additional Divisional  
Commissioner, Land and Building Tax  
Department, Rajasthan, Mini Secretariat,  
Jaipur.

.....Respondents

**Date of Judgment:-**

**July 12<sup>th</sup> & 16<sup>th</sup>, 2007.**

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**PRESENT**

**HON'BLE MR.JUSTICE R.M. LODHA**  
**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Mr. Banwari Lal Avasthi, Additional  
Government Advocate for petitioners-State.  
Mr. Anant Kasliwal for the respondents.

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**Oral Judgment:- (Per R.M. Lodha, J.)**

**12<sup>th</sup> July, 2007**

The State Government and the authorities of the Land & Building Tax Department have filed this writ petition under Articles 226 & 227 of the Constitution of India challenging the orders dated 19/7/1996 & 28/10/1998 passed by the Rajasthan Taxation Tribunal, Jaipur.

**2.** The controversy arises from the facts and circumstances which may be briefly noticed by us immediately.

(i) M/s.Bharat Petroleum Corporation Ltd. (for short, "Bharat Petroleum") is owner of diverse flats being flat Nos.103,

104, 204, 303, 304, 402, 403 and 404 in the building known as 'Kamal Apartment' situate at Ram Mandir, Near Old Power House, Banipark, Jaipur. The Assessing Authority, Director Land & Building Tax passed an assessment order on 1/12/1990 assessing the aforesaid flats having market value of Rs.28,70,700/-. After deducting a sum of Rs.1 lac from market value at which no tax was payable, the assessing authority held the taxable market value of the aforesaid flats at Rs.27,70,700/- and determined tax at Rs.26,060/-.

(ii) On 15/4/1991, the Director, Land & Building Tax issued a Circular that the flats in multi-storied buildings should be assessed in accord with the said Circular by treating the flats at one floor as one unit.

(iii) In the light of the said Circular dated 15/4/1991, a rectification order came to be issued by the assessing authority

under Section 22A of the Rajasthan Lands & Buildings Tax Act, 1964 (for short, "LBT Act") in respect of the aforesaid flats owned by Bharat Petroleum on 27/7/1991. By rectification order, the assessing authority treated the petitioners' flats in 'Kamal Apartment' in four units on the basis of the Circular dated 15/4/1991. On the basis of total market value of all the units as on 1/4/1989, the land & building tax was determined.

(iv) Dissatisfied with the order dated 27/7/1991, Bharat Petroleum preferred revision petition before the Divisional Commissioner. The Revisional Authority did not find any infirmity in the rectification order of the assessing authority dated 27/7/1991 and consequently by his order dated 16/12/1991, dismissed the revision petition.

(v) Bharat Petroleum then filed writ petition before this Court which on the

establishment of the Rajasthan Taxation Tribunal, was transferred there. The Tribunal set-aside the Circular dated 15/4/1991 and so also the orders of Revisional Authority and the Assessing Authority and remanded the matter back to the Assessing Authority for passing fresh assessment order by treating the each flat as an independent unit vide its order dated 19/7/1996.

(vi) A review petition was filed by the present petitioners before the Tribunal seeking review of the order dated 19/7/1996, which came to be dismissed on 28/10/1998.

3. The LBT Act has been enacted by the Rajasthan State Legislature under Entry 49 of List-II of Seventh Schedule of the Constitution of India.

Entry 49 reads thus:-

“Taxes on lands and buildings”.

4. It is permissible under Entry 49 of List-II to levy a tax on land as well as building or on lands or on buildings. It is now well settled that the levy of tax, pursuant to an Act enacted under Entry 49 of List-II, is on the property and not on a person. That the State legislature has competence to impose tax either on lands or on buildings or on both is not in doubt. The legislative competence, latter, is unassailable where tax is imposed either on lands or on buildings or on both as it gets sanction from Entry 49 of List-II of Seventh Schedule.

5. Section 2(3) & (5) of the LBT Act defines 'Building' and 'Land' thus:-

“(3) '*Building*'- includes a house, out house, stable, shed, and other enclosures or structures or part thereof whether of masonry, bricks, wood, mud, metal or any other material whatsoever, for whatever purpose used but does not include-

(a) a tenant or other such portable structure.

(b) a dwelling house erected on a holding as defined in the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) by the tenant for his own occupation or a cattleshed or a store house or any other construction for agricultural purposes erected or set up by him on his holding, provided the area covered thereby does not exceed the limit prescribed for purposes of the proviso to sub-section (1) of section 66 or the second proviso to section 67 of the said Act."

"(5) '*Land*' means land which is, or is capable of being used as a building site, and includes garden or ground appurtenant to a building but does not include a holding as defined in the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) provided the improvement referred to in sub-clause (a) of clause (19) of section 5 of the said Act over such holding does not exceed such area as has been prescribed for purposes of the second proviso to sub-sec.(1) of section 66 or the second Proviso to section 67 of the said Act."

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6. Section 2(8) & (10) define the expression "occupier" & "owner". It reads thus:-

"(8) '*Occupier*' means the person in actual occupation or use of the [land or building] or a portion thereof, in respect of which the tax is payable and includes-

(a) the owner in occupation.

(b) the tenant who for the time being is paying or is liable to pay rent in respect thereof to the owner,

(c) the rent free tenant or licence thereof, and

(d) the person who is liable to pay to the owner damages for unauthorised use and occupation thereof."

"(10) '*Owner*' in respect of any [land or building] or portion thereof, includes the person, who for the time being receives, or who would be entitled to receive the rent thereof, if the same were let, and includes-

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(a) an agent or trustee who receives such rent on account of the owner,

(b) an agent or trustee who receives the rent of, or is entered with the management of, any [land or building] devoted to religious or charitable purpose;

(c) a receiver, sequestrator or manager appointed by any court of competent jurisdiction to have the charge or to exercise the rights of the owner, of the [land or building] or portion thereof, and

(d) The mortgages in possession thereof.

Provided that in the case of [land or building] owned by the State Government, the lessee or grantee thereof from the State Government shall for the purpose of this Act, be deemed to be the owner of such [land or building] as the case may be.

Provided further that in the case of [land and building] held on lease for a term not less than thirty years the lessee shall, for the purposes of this Act, be deemed to be the owner of such [land or building]."

7. The definition of word 'building' under Section 2(3) is inclusive and not exhaustive and it includes inter-alia house or part thereof.

8. The twin questions that arise for our consideration in this writ petition are:

**(one)** Whether the independent flats in a multi-storied building are to be assessed as one unit or separate units for the purposes of Land and Building Tax?

**(two)** Whether the Circular dated 15/4/1991 issued by the Director, Land & Building Tax, directing that the flats in multi-storied buildings on each floor must be treated as one unit is legal?

**Re : (one).**

9. The circular dated 24/4/1974 issued by the Government of Rajasthan, Land &

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Building Tax Department, concerning the meaning of 'unit' is quite relevant. It reads thus:-

**"GOVERNMENT OF RAJASTHAN  
LANDS & BUILDINGS TAX DEPARTMENT**

No.F2A-3(ii) DLBT/74/515      Dated 24<sup>th</sup> April, 1974  
All Assistant Directors,  
Lands & Buildings Tax.

**C I R C U L A R**

**Sub:- Meaning of 'Unit'.**

A question arose whether different portions of a building by different persons from different 'Units' for purpose of land & building tax.

The matter was examined in consultation with law Department it has been advised that the definition of 'building' as given in Sec.3 of Rajasthan Lands & Buildings Tax Act, 1964 includes a portion of building, so also the definition of 'Owner' as given in Sec.2(10), is with reference to land or building or portion thereof. Again the definition of 'occupier' as given in Sec.2(8) of the said Act is also with reference to land & building or portion thereof.

Further, there is no provision in the said Act for a consolidated

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assessment of a building separately owned & possessed by different owners and for apportionment of the tax so assessed so as to enable recovery from different co-owners. Hence the scheme of the Act, along with the definition referred above, all lead to the irresistible conclusion that a portion of a building owned and possessed separately by different persons is a different unit for the purpose of assessment under said Act.

CIRCULAR No.27/74

Sd/-  
S.L. JOSHI  
Director  
Lands & Buildings Tax Deptt.,  
Rajasthan, Jaipur."

**10.** The State Government itself looked into the question whether different portions of a building occupied by different persons form different Units for the purpose of land and building tax or not? In the light of the definition of 'building' given in Section 2(3) and also definition of 'owner' and 'occupier' as

provided in Section 2(8) & (10) respectively, the State Government was clear in its mind that a portion of the building owned and possessed by a different person is a different unit for the purpose of the LBT Act and all Assistant Directors of LBT were informed accordingly.

**11.** There is yet another circular that was issued on 5/6/1980 by the Director, LBT Department highlighting that the design and construction of the building in totality is an important factor which can help in deciding the number of units.

**12.** In respect of inhabited house duty leviable in England, the Court of Appeal made weighty observations more than 25 years and 10 decades before concerning the multi-storied buildings. The Court of Appeal speaking through Jessel, M.R. in the case of the Yorkshire Fire and Life Insurance Company Vs. Clayton, 1881 Q.B. 421 observed that formerly houses were

built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses one above the other; they are built in separate flats or storeys, but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied, and has no connection with the above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses.

**13.** The House of Lords in the case of Grant Vs. Langston decided on 28<sup>th</sup> May, 1900 (H.L. 1900 P.C. 383) while dealing with the case of inhabited house duty in England after noticing the observations made by Jessel, M.R. in the Yorkshire Fire and Life Insurance Company observed further that none would dream of calling two houses built one above the other, one house, if the same conditions which are found to exist here were found to exist in the same

structures built side by side, and not one above the other. It was observed thus:-

"It appears to me that in the language of Sir George Jessel there are two houses built one above the other. I suppose no one would dream of calling them one house if the same conditions which are found to exist here were found to exist in the same structures built side by side, and not one above the other, and, if it is possible to have one house built over another house, then all that has been held to constitute a separate house exists here : there is nothing which is held in common; the one structure is superposed upon the other, and that is all."

**14.** Our own Supreme Court in the case of TATA Engineering & Locomotive Co.Ltd. Vs. Gram Panchayat, Pimpri Waghere : AIR 1976 SC 2463 while dealing with the expression 'Houses & Lands' used in Section 89 of the Bombay Village Panchayat Act, 1933 accorded approval to the aforesaid observations made in the cases of Yorkshire Fire & Life Insurance Company and Grant. In paragraph

15 of the report, the Supreme Court observed thus:-

"Formerly houses were built so that each house occupied a separate site. In modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys. For legal and ordinary purposes they are separate houses. Each is separately let and separately occupied. One has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses. (See Yorkshire Fire & Life Insurance Company v. Clayton, (1881) 8 QBD 421 (424) and Grant v. Langston, 1900 PC 383)."

16<sup>th</sup> July, 2007

**15.** The expression 'building' may have different meaning in different context. It has to be given the meaning keeping in view the provisions of the LBT Act which seeks

to impose tax on land or building or both. While construing the word 'building', the provision of Section 3(1A) has to be kept in mind that provides that the tax shall be levied on land or building or both separately as units. Though, the word 'unit' has not been defined in the LBT Act, the legislative intention is made clear that each building has to be separately assessed as a unit.

**16.** In the definition of 'building' under Section 2(3) of the LBT Act, it is pertinent to notice that it includes house or a part thereof.

**17.** In the case of Notified Area Committee Nangal Township Vs. Bhakra Management Board, Chandigarh & Ors. : J.T. 1999(5) S.C. 349, the question that came up for consideration before the Supreme Court was as to whether the Notified Area Committee was correct in assessing the annual value of row of quarters in one

block as a 'building' for the purpose of levying house tax under the Punjab Municipal Act, 1911. The expression, 'building' in the Punjab Municipal Act, 1911 is defined in clause (2) of Section 3 of the Act to mean "any shop, house, hut, outhouse, shed or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever and includes a wall and a well". While dealing with the definition of 'building' in the context of row of quarters in one block as to whether the entire row of bungalow/quarter is one building for assessing the rental value of property tax, the Supreme Court held that simply because some quarters or some bungalows of common wall, would not mean that such quarter or bungalow ceases to be a house. House is a place of dwelling or habitation. Each quarter or bungalow is allotted to a separate employee who lives therein with his family. The Supreme Court

did not accept the proposition that quarters in one row having common wall though each separating each other would mean one building for the purpose of arriving at an annual value. If the house built by the side of the other house in one row having common wall could be treated as a separate building for the purposes of property tax, in our considered view the flat constructed above flat in a multi-storied building or the flats on the same floor of a multi-storied building though having common wall, would be a separate building for the purpose of LBT Tax.

**18.** More than hundred years ago, Earl of Halsbury L.C. stated in the case of Grant Vs. Langston that the word "house" has acquired an artificial meaning. The word is no longer the expression of a simple idea; but to ascertain its meaning one must understand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a

statute. Each flat in a multi-storied building is a separate occupation and is a separate place of dwelling and habitation with the separate entry.

**19.** Seen thus, it is difficult to uphold the contention of State that group of flats in a multi-storied building owned by one person constitute one 'building' within the meaning of Section 2(3). For all legal and ordinary purposes, each separate flat in a multi-storied building would constitute a separate house or for that matter a separate building under Section 2(3) since each of such flat is separate and there is no nexus with the flat above or below or side by side. There is no common functionality as such.

**20.** The pre-requisite of the tax under Entry 49 List-II of Seventh Schedule, inter-alia, is that it must be a tax on unit. The tax cannot be taxed on totality i.e. it is not a composite tax and value of

all lands and buildings. It is for this reason as well that each flat in a multi-storied building being a house by itself has to be treated as a separate unit and in that sense a separate 'building' under Section 2(3) of the LBT Act and has to be taxed as such.

**21.** We, thus, find ourselves in agreement with the view of the Rajasthan Taxation Tribunal, Jaipur.

**22.** The writ petition, accordingly, has no merit and is dismissed with no order as to costs.

**MOHAMMAD RAFIQ, J.**

**R.M. LODHA, J.**

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RAJASTHAN  
AT JAIPUR BENCH JAIPUR.

D.B. CIVIL WRIT PETITION NO.3810/2002.

Assistant Director Land & Building Tax  
Department and ors.

.....Petitioners.

Versus

M/s.Bharat Petroleum Corporation Limited  
and anr.

.....Respondents.

Date of Order:-

July 12<sup>th</sup> & 16<sup>th</sup>, 2007.

**HON'BLE MR.JUSTICE R.M. LODHA**  
**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

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Whether this judgment / order is to be  
reported in Law Journal/s : Yes/No